UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,287	06/28/2002	David Frederick Bantz	RPS920020080US1	4431

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EXAMINER
HAMZA, FARUK

ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/064,287	BANTZ ET AL.
	Examiner	Art Unit	
	Faruk Hamza	2155	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 June 2002</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-5 and 9-13</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) <u>6-8 and 14-16</u> are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>28 June 2002</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)   4)☐ Interview Summary (PTO-413)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   Paper No(s)/Mail Date. _____.
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)   5)☐ Notice of Informal Patent Application (PTO-152)
     Paper No(s)/Mail Date _____.   6)☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the application filed on June 28, 2002. Claims 1-16 are now pending.

Election/Restrictions

2.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.   Claims 1-5 and 9-13 are drawn to computer network monitoring, classified in class 709 and subclass 224.

II.   Claims 6-8 and 14-16 are drawn to virtual machine task or process management, classified in class 718 and subclass 1.

3.   The inventions are distinct, each from the other because of the following reasons:

Inventions group I and group II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it distinctly relates workstations. The subcombination has separate utility such as virtual machines.

4.   Applicant is reminded that upon the cancellation of claims to a non-elected

invention, the inventorship must be amended in compliance with 37 CFR 1.48(b)

if one or more of the currently named inventors is no longer an inventor of at

least one claim remaining in the application. Any amendment of inventorship

must be accompanied by a request under 37 CFR 1.48(b) and by the fee

required under 37 CFR 1.17(i).

5.   During a telephone conversation with Mrs. Jeanine Ray on April 28, 2005

a provisional election was made without traverse to prosecute the invention of

group I, claims 1-5 and 9-13. Affirmation of this election must be made by

applicant in replying to this Office action. Claims 6-8 and 14-16 are withdrawn

from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to

a non-elected invention.

Specification

6.   Content of Specification

Background of the Invention: See MPEP § 608.01(c). The specification
should set forth the Background of the Invention in two parts:

(1)   Field of the Invention: A statement of the field of art to which the
invention pertains. This statement may include a paraphrasing of
the applicable U.S. patent classification definitions of the subject
matter of the claimed invention. This item may also be titled
"Technical Field."

(2)   <u>Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98</u>: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

7.   The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Objections

8.   Claims 1-5 and 9-13 are objected to because of the following informalities: Claims are numbered as alpha numeric. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10.   Claims 1,3,4,5,9,11,12,13 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11.   Claims 1,4,9, and 12 recite the limitation "the shared resource". There is insufficient antecedent basis for this limitation in the claim.

12.   Claims 4,11,12 and 13 recite the limitation "the shared resource". There is insufficient antecedent basis for this limitation in the claim.

13.   Claim 3,5,11 and 13 recites the limitation "it". There is insufficient antecedent basis for this limitation in the claim.

14.   Claim 4 renders indefinite because it is indefinite unclear language. Claims 4 recites "setting a first workstation activity state to; idle if said utilization level is below a first threshold, or to active if said utilization level is above said first threshold and said first workstation activity state is already idle or active, or to blocked if said utilization level is above said first threshold and said first workstation activity state is already blocked, and; checking said first workstation activity state; in response to a first workstation activity state of idle, assigning said grid workload to said first workstation;"

15.   Claims 2,3,5,11 and 13 have the same deficiency of their base claims.

Claim Rejections - 35 USC § 102

16.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors

Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology

Technical Amendments Act of 2002 do not apply when the reference is a U.S.

patent resulting directly or indirectly from an international application filed before

November 29, 2000. Therefore, the prior art date of the reference is determined

under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C.

102(e)).

17.   Claims 1,2,9 and 10 are rejected under 35 U.S.C. 102(e) as being

anticipated by Ellis (U.S. Patent Number 6,732,141).

18.   Ellis has disclosed:

* <Claim 1>

    In a computer network including at least two workstations and

implementing a grid for executing a grid workload on the shared resources of the

at least two workstations, a method of assigning said grid workload to one of the at least two workstations, the method comprising:

determining an activity state of a first workstation of the at least two workstations, said activity state being indicative of a degree of current utilization of said first workstation by a local workload; (Column 11, lines 28-45)

in response to a determination that said activity state indicates low utilization, assigning said grid workload to said first workstation; (Column 11, 53-65)

in response to a determination that said activity state indicates high utilization, holding said grid workload for assignment to another of the at least two workstations. (Column 11, 45-52)

- <Claim 2>

The method of claim 1 wherein, in response to a determination that said activity state indicates high utilization, the method further comprising;

determining a workstation preference for accepting said grid workload on said first workstation when said utilization is high; (Column 11, lines 28-45)

in response to a determination that said workstation preference is yes, assigning said grid workload to said first workstation; (Column 11, lines 45-65)

in response to a determination that said workstation preference is no, holding said grid workload for assignment to another of the at least two workstations. (Column 11, lines 45-52)

- <Claim 9>

  In a computer network including at least two workstations and implementing a grid for executing a grid workload on the shared resources of the at least two workstations, a system for assigning said grid workload to one of the at least two workstations, the system comprising:

  a workstation monitor for determining an activity state of a first workstation of the at least two workstations, said activity state being indicative of a degree of current utilization of said first workstation by a local workload; and (Column 11, lines 28-45)

  a workload scheduler for; (Column 12, lines 5-10)

  in response to a determination that said activity state indicates low utilization, assigning said grid workload to said first workstation; or (Column 11, lines 53-65)

  in response to a determination that said activity state indicates high utilization, holding said grid workload for assignment to another of the at least two workstations. (Column 11, lines 45-52)

- <Claim 10>

  The system of claim 9 wherein,

said workstation monitor further determines a workstation preference for

accepting said grid workload on said first workstation when said utilization is

high; and (Column 11, lines 28-45)

said workload scheduler, in response to a determination that said activity

state indicates high utilization, further; (Column 12, lines 5-10)

checks said workstation preference, and, in response to a workstation

preference of yes, assigns said grid workload to said first workstation, or, in

response to a workstation preference of no, holds said grid workload for

assignment to another of the at least two workstations. (Column 11, lines 45-65).

Allowable Subject Matter

19.   Claims 4 and 12 would be allowable if rewritten or amended to overcome

the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office

action.

20.   Claims 3,5,11 and 13 are objected to as being dependent upon a rejected

base claim, but would be allowable if rewritten in independent form including all

of the limitations of the base claim and any intervening claims and to overcome

the rejection(s) under 35 U.S.C. 112, 2nd paragraph.

Conclusion

21.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Carrasco et al. (U.S. Patent Number 6,775,831) disclosed system and method for rapid completion of data processing tasks distributed on a network.

- Carlson et al. (U.S. Patent Number 6,845,503) disclosed system and method for dynamic class reloading in the application server environment.

- Hughes (U.S. Patent Number 6,845,009) disclosed networked computer system.

- XU (U.S. Patent Number 6,418,462) disclosed distributed computing method.

- Wolff (U.S. Patent Number 6,886,035) disclosed dynamic load balancing of a network of a client and server computer.

22.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faruk Hamza whose telephone number is 571-272-7969. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached at 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
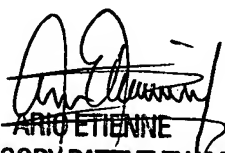
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll –free).

Faruk Hamza

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